

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,)	
)	
Plaintiff,)	No. CR-15-1723-TUC-RCC-DTF
)	
vs.)	Tucson, Arizona
)	March 21, 2018
Lonnie Ray Swartz,)	3:52 p.m.
)	
Defendant.)	
)	

BEFORE: THE HONORABLE RANER C. COLLINS, JUDGE

REPORTER'S EXCERPTED TRANSCRIPT OF PROCEEDINGS

JURY TRIAL
DAY 2

(DIRECT EXAMINATION OF SHANDON WYNECOOP)

Official Court Reporter:
Candy L. Potter, RMR, CRR
Sandra Day O'Connor U.S. Courthouse, Suite 312
401 West Washington Street, Spc 36
Phoenix, Arizona 85003-2151
(602) 322-7246

Proceedings Reported by Stenographic Court Reporter
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CR-15-1723-TUC-RCC - March 21, 2018

A P P E A R A N C E S

For the Government:

U.S. Attorney's Office Tucson

By: **Wallace Heath Kleindienst**, Esq.

Mary Sue Feldmeier, Esq.

405 West Congress Street, Suite 4800

Tucson, Arizona 85701

For the Defendant:

Law Offices of Sean C. Chapman

By: **Sean Christopher Chapman**, Esq.

100 North Stone Avenue, Suite 701

Tucson, Arizona 85701

Law Office of Jim E. Calle

By: **Jamie Ernest Calle, III**, Esq.

2315 East Hawthorne Street

Tucson, Arizona 85719

CR-15-1723-TUC-RCC - March 21, 2018

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SHANDON WYNECOOP
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~~Shandon Wynecoop - Direct Examination~~

1 (The following excerpt is the Direct Examination of Shandon
2 Wynecoop.)

3 THE COURT: You may call your next witness.

4 MR. KLEINDIENST: Call Shandon Wynecoop, Your Honor.

5 (SHANDON WYNECOOP, GOVERNMENT WITNESS, PREVIOUSLY SWORN.)

15:52:49

6 THE CLERK: Please be seated.

7 Please speak directly into the microphone, state your
8 full name for the record and spell your last name.

9 THE WITNESS: My name is Shandon Wynecoop,
10 W-Y-N-E-C-O-O-P.

15:53:02

11 THE COURT: Whenever you're ready.

12 MR. KLEINDIENST: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. KLEINDIENST:

15 Q. Good afternoon, Mr. Wynecoop.

15:53:13

16 A. Good afternoon.

17 Q. If you could speak in a loud and clear voice so the members
18 of the jury over here can hear you plainly, I would appreciate
19 it.

20 A. Yes, sir.

15:53:20

21 Q. Could you tell us where you live at the present time?

22 A. Right now I'm in Spokane, Washington.

23 Q. And what do you do for a living?

24 A. I'm an electrician, I work for Oregon Electric Group in
25 Portland, Oregon right now.

15:53:34

~~Shandon Wynecoop - Direct Examination~~

1 Q. But you live in Washington?

2 A. Yes.

3 Q. Spokane?

4 A. Yes.

5 Q. What's your profession?

15:53:38

6 A. I do industrial and commercial electrical work.

7 Q. Was there a time when you were a member of the Border
8 Patrol?

9 A. Yes, sir.

10 Q. When did you join the Border Patrol?

15:53:47

11 A. August 11th, 2011.

12 Q. What had you done before joining the Border Patrol?

13 A. What I'm doing right now.

14 Q. Electrician?

15 A. Right.

15:53:56

16 Q. So you joined in 2011, August of 2011, you said?

17 A. Yes, sir.

18 Q. And just so the jury knows, when you join the Border Patrol
19 do they send you somewhere for training and educational
20 purposes?

15:54:08

21 A. Yeah. I was in Artesia, New Mexico for five month.

22 Q. Artesia, New Mexico?

23 A. Yes, sir.

24 Q. Is that kind of on the eastern side of New Mexico?

25 A. I believe so.

15:54:18

~~Shandon Wynecoop - Direct Examination~~

1 Q. And then you're there at the Academy for five months?

2 A. Yes, sir.

3 Q. And then you get assigned to a station?

4 A. I was assigned to a station prior.

5 Q. Prior to going to the Academy?

15:54:29

6 A. Right.

7 Q. What station were you assigned to?

8 A. Nogales, Arizona.

9 Q. So when you went to the Academy you knew you were going to

10 eventually going to be Nogales, Arizona?

15:54:37

11 A. Correct.

12 Q. Do you recall when you entered on duty at the Nogales,

13 Arizona station?

14 A. It was the first week of January 2012.

15 Q. Tell the jury, if you could, the types of things you did as

15:54:50

16 a Border Patrol Agent.

17 A. Sit on Xs and stare at the fence for entire shifts as a

18 junior agent. Drive through the downtown areas and just patrol

19 and listen for the radio or cameras to call out people jumping

20 over the fence. Or be out in the desert and responding to

15:55:12

21 sensors and camera traffic.

22 Q. A number of different things?

23 A. Right.

24 Q. When you say you sit on Xs, what do you mean?

25 A. Sit in one stationary spot for an entire shift.

15:55:23

~~Shandon Wynecoop - Direct Examination~~

1 Q. Just you and the car?

2 A. Yes, sir.

3 Q. Usually by yourself?

4 A. Yes.

5 Q. Have you ever sat on any Xs on West International Street?

15:55:32

6 A. Yes.

7 Q. A number of times?

8 A. A number of times.

9 Q. And could you tell the jury the names of the Xs that have

10 been assigned to those locations?

15:55:43

11 A. West I and 410 or Blind Center.

12 Q. Blind Center is one; correct?

13 A. Right. Blind Center, West I, and then 410 is the other.

14 Q. And do you know where the DeConcini Port of Entry is in

15 Nogales?

15:55:59

16 A. Yes, sir.

17 Q. How far is the port there at DeConcini from the Blind

18 Center X that you described?

19 A. Maybe a few hundred yards, couple hundred yards.

20 Q. To the east or to the west?

15:56:11

21 A. To the west.

22 Q. To the west?

23 A. Right.

24 Q. And then at the Blind Center X -- and an X is just the name

25 for a spot and you just park your car; right?

15:56:21

~~Shandon Wynecoop - Direct Examination~~

1 A. Right.

2 Q. And then going further west on West International, what
3 would be the next X that you would park at?

4 A. 410. Or Camera Pole -- kind of Camera Pole and Blind
5 Center were kind of the same X, you just kind of went back and
6 forth. 15:56:32

7 Q. Do they call that Camera Pole because the surveillance
8 camera is stationed there on West I?

9 A. Correct.

10 Q. Okay. How about going further west on International
11 Street, is there another X that you sat on? 15:56:42

12 A. 410.

13 Q. 410?

14 A. Yeah.

15 Q. So it's Blind Center, Camera Pole, and then 410? 15:56:48

16 A. Right.

17 Q. Okay. And this is what you did when you first come out of
18 the Academy and they put you on Xs?

19 A. For the most part, yeah.

20 Q. And for the most part by yourself? 15:57:01

21 A. Yes.

22 Q. And when you're sitting on an X in a patrol car, what are
23 you doing? What are you supposed to be doing?

24 A. Staring at the fence back and forth. Kind of just
25 patrolling -- you can patrol your little area if you want to. 15:57:11

~~Shandon Wynecoop - Direct Examination~~

1 But there's not much driving to do, a couple hundred yards back
2 and forth.

3 Q. And you're by yourself most of the time?

4 A. Right, all the time.

5 Q. All the time.

15:57:21

6 A. Yeah.

7 Q. Now, would you work any particular shift or would you work
8 different shifts?

9 A. As a junior agent you don't really get too much of a
10 choice, you kind of just go where they tell you to go for three
11 months at a time.

15:57:32

12 Q. Okay. And when I say "shifts," is there like a daytime
13 shift?

14 A. There's a day shift, a swing shift, and a midnight shift.

15 Q. And where do they usually assign the junior agents to?

15:57:44

16 A. Usually Xs.

17 Q. On the midnight shift?

18 A. Yeah.

19 Q. So when you're the low man on the totem pole, you're on the
20 X by yourself sitting in a cruiser, usually at night. Is that
21 a fair statement?

15:57:54

22 A. Yes.

23 Q. Okay. And then hopefully you graduate to something more
24 interesting after you've done that for a while?

25 A. Right.

15:58:04

Shandon Wynecoop - Direct Examination

1 Q. Okay. Now, the DeConcini Port of Entry has what's called a
2 southbound lane?

3 A. Correct.

4 Q. Can you describe to the jury what a southbound lane is at
5 the Port of Entry?

15:58:15

6 A. Well, they have two, they've got a pedestrian southbound
7 sidewalk, and then the driving southbound, just the southbound
8 going to Mexico, where they're kind of inspected going out.

9 Q. Going south?

10 A. Right.

15:58:30

11 Q. Why is there an inspection of vehicles and pedestrians
12 going south into Mexico as compared to coming north into the
13 United States?

14 A. For primarily money and guns, other contraband going
15 southbound.

15:58:44

16 Q. Is there a certain amount of money that you have to declare
17 that you're leaving the country with that is a violation of the
18 law if you don't declare it?

19 A. Right.

20 Q. What's that -- do you know offhand what that amount is?

15:58:53

21 A. I believe it's \$10,000.

22 Q. And is it a crime to carry a firearm into Mexico from the
23 United States?

24 A. Yes.

25 Q. Okay. Okay. And I think Mexico makes it a crime itself.

15:59:01

~~Shandon Wynecoop - Direct Examination~~

1 A. Right.

2 Q. Is the southbound pedestrian lane right next to the vehicle
3 lane?

4 A. Yes.

5 Q. Have you ever worked the southbound port of entry
6 operations?

15:59:12

7 A. Yes.

8 Q. How many times did you work there?

9 A. I worked there once for -- I mean, it was a consecutive
10 three months I was there.

15:59:24

11 Q. For three months?

12 A. Right.

13 Q. What would you normally do?

14 A. Ask questions to people driving south or walking south
15 through the port, kind of picking out vehicles or picking out
16 pedestrians to just ask questions to.

15:59:34

17 Q. Okay. If you see things about them that make you think
18 they might be either smuggling cash out or firearms, you would
19 stop them and talk to them?

20 A. Right.

15:59:50

21 Q. And do you have that authority at the port of entry because
22 it's at the international border?

23 A. Right.

24 Q. To stop and talk to them?

25 A. Right.

15:59:57

~~Shandon Wynecoop - Direct Examination~~

1 Q. Whereas you might not have that authority, say, if you're
2 in downtown Tucson?

3 A. Right.

4 Q. So how long were you working there at the Port of Entry,
5 southbound? 16:00:06

6 A. I was there for about three months, I believe. It was -- I
7 think it was a 90-day detail that we were assigned to.

8 Q. Now do you remember the night of October 10th, 2012?

9 A. Yes.

10 Q. You had been working for the Border Patrol for about a year 16:00:18
11 on that --

12 A. Yeah, I was just under a year in the field.

13 Q. So --

14 A. Fifteen months total.

15 Q. So 15 months. So can you tell the members of the jury, in 16:00:31
16 that 15 months from when you entered on duty in Nogales to the
17 night in question, how often you had been rocked?

18 A. None up until that day.

19 Q. You had never been rocked?

20 A. I had never been rocked prior to that, no. 16:00:46

21 Q. And you've sat on Xs there on West I?

22 A. Correct.

23 Q. And you've never been rocked?

24 A. No.

25 Q. After that night had you ever been rocked? 16:00:53

~~Shandon Wynecoop - Direct Examination~~

1 A. No.

2 Q. The only time that you ever got rocked as a Border Patrol
3 Agent was when you were involved in this incident that we're
4 all here in court for?

5 A. Myself, yes.

16:01:05

6 Q. Okay. On the night of October 10th, do you remember what
7 shift you were working?

8 A. It was the swing shift.

9 Q. Which would mean -- when would that start?

10 A. I think we were doing 2:00 to midnight, I believe it was
11 what we were assigned to.

16:01:15

12 Q. Who were you working with?

13 A. I don't remember everybody who was there that night. But
14 our -- kind of our crew that was set up there was Agent Lonnie
15 Swartz and Stephen Porter, Agent Ramos, and Similton, Helner,
16 Grijalva. And I think there was a couple others, but I don't
17 remember.

16:01:33

18 Q. Were you all working at the same time or were you taking
19 turns?

20 A. Yeah, we were kind of broken up. Some agents would do the
21 southbound pedestrian, some would do the vehicles, and a couple
22 probably had the day off.

16:01:51

23 Q. Okay.

24 A. And we're just kind of move around and doing things because
25 it's stationary and it gets boring.

16:02:06

Shandon Wynecoop - Direct Examination

1 Q. It gets boring?

2 A. Right.

3 Q. Sounds like the job can get very boring.

4 A. Yeah, I kind of got stuck there.

5 Q. Okay. How were you dressed on the night of October 10th?

16:02:14

6 A. My regular Border Patrol uniform.

7 Q. Can you describe that for the jury, please?

8 A. A green uniform, head to toe, ball cap, and a gun belt.

9 Q. Did you have a badge and an insignia or patches on your

10 uniform?

16:02:37

11 A. Yes, sir.

12 Q. And how would you identified as?

13 A. Border Patrol Agent, and then my name above the -- my

14 actual badge itself.

15 Q. Okay. Were you armed?

16:02:51

16 A. Yes, sir?

17 Q. What kind of weapon did you have with?

18 A. H/K P2000.

19 Q. Is that a pistol or is that a revolver?

20 A. Right, it's a pistol.

16:03:03

21 Q. Is that the same kind of pistol that all Border Patrol

22 agents in Nogales Station used?

23 A. Yes, sir.

24 Q. So it's a pistol that -- you don't load the cylinder, you

25 put a clip in; right?

16:03:16

~~Shandon Wynecoop - Direct Examination~~

1 A. Correct.

2 Q. Okay. Did you have long guns with you?

3 A. No.

4 Q. What's a long gun?

5 A. Just a rifle.

16:03:23

6 Q. Did you -- were you ever issued a long gun?

7 A. We could take them out in the field with us if we wanted to
8 when we were on normal patrols. But in the case of us working
9 at the port, we didn't carry them.

10 Q. Why is that?

16:03:36

11 A. We're in front of the public the entire shift, on our feet.
12 And it's intimidating. So they just didn't want us to carry
13 them. They get in the way, so we didn't carry them.

14 Q. How about, are you familiar with nonlethal weapons?

15 A. Yes, sir.

16:03:52

16 Q. Can you tell the jury what that is and what they are?

17 A. We have the Taser or the pepperball launcher, a couple
18 different forms of a pepperball launcher.

19 Q. What does a pepperball launcher do?

20 A. Just sits out -- it's basically pepper spray in a -- but
21 it's a powder in a capsule.

16:04:07

22 Q. What do you usually use it for?

23 A. Disburse people from an area.

24 Q. Okay. Did you ever use one?

25 A. Not in the field.

16:04:22

~~Shandon Wynecoop - Direct Examination~~

1 Q. Not in the field?

2 A. Right.

3 Q. For training?

4 A. Just for training.

5 Q. Okay. By the way, did you ever fire your pistol when you
6 were a Border Patrol Agent?

16:04:26

7 A. Not in the field.

8 Q. Not on duty in the field?

9 A. Right.

10 Q. But only at the firing range?

16:04:34

11 A. Correct.

12 Q. Okay. Were there -- were the officers you were working
13 with that night, were they -- any of them have nonlethal
14 weapons that you described?

15 A. At the port I couldn't say for sure, but I don't believe
16 so.

16:04:47

17 Q. Did you have one?

18 A. No.

19 Q. Okay. And you mentioned a number of people that were
20 working there at the port of entry with you. And you mentioned
21 Lonnie Swartz; right?

16:04:55

22 A. Correct.

23 Q. Did you know Lonnie Swartz prior to that night?

24 A. Yes.

25 Q. Had you worked with him at the port of entry?

16:05:02

~~Shandon Wynecoop - Direct Examination~~

1 A. Yes.

2 Q. Do you remember how many nights or how many shifts you
3 worked?

4 A. I think we were only at the port for about -- I think we
5 were on our second week at the port. 16:05:11

6 Q. Okay. Do you see him in court today?

7 A. Yes.

8 Q. Could you just tell us where he's sitting and what he's
9 wearing, just so we know who you're talking about?

10 A. To my left, black suit. 16:05:22

11 THE COURT: Is he now standing?

12 THE WITNESS: He is standing.

13 MR. KLEINDIENST: Thank you.

14 May the record reflect the identification?

15 THE COURT: It may so reflect. 16:05:31

16 BY MR. KLEINDIENST:

17 Q. So that night on October 10th, 2012, do you remember
18 hearing something over the radio that drew your attention?

19 A. Yes.

20 Q. What did you hear on the radio? 16:05:48

21 A. That there was two people on the fence with possible
22 contraband on their backs.

23 Q. What fence were they talking about?

24 A. What's that?

25 Q. What fence were they talking about? 16:05:58

~~Shandon Wynecoop - Direct Examination~~

1 A. The international boundary fence.

2 Q. Okay. When you're working as an agent, you obviously have
3 a radio and you're in communications with other agents and
4 dispatch; right?

5 A. Right.

16:06:10

6 Q. And you have an ear piece in your ear?

7 A. Yes.

8 Q. You're listening to the radio traffic going on even though
9 you might not be talking?

10 A. Right.

16:06:16

11 And it was different while we're at the port too. We
12 didn't really have to listen to too much. We would turn it up
13 or turn it down, depending on who we're talking to, which I did
14 frequently.

15 Q. Okay. But you would hear what the dispatcher was saying
16 and what other agents were saying in the field; correct?

16:06:29

17 A. Right.

18 Q. Do you recall whether it was an agent or was it the
19 dispatcher that mentioned there were two subjects on the fence?

20 A. I thought it was the dispatcher. I am not 100 percent
21 positive on that.

16:06:39

22 Q. What did you do?

23 A. I ran out through the gate to the pedestrian gate and
24 looked up the hill, because it was only a few hundred yards
25 away, to see if I could see them on the fence.

16:06:55

~~Shandon Wynecoop - Direct Examination~~

1 Q. What did you see?

2 A. I saw them on the top of the fence.

3 Q. You saw them on the top of the fence.

4 A. Yeah.

5 Q. Did anybody else run out with you?

16:07:01

6 A. Yes.

7 Q. Who?

8 A. Agent Swartz and Porter.

9 Q. And do you remember Agent Porter's first name?

10 A. Stephen Porter.

16:07:09

11 Q. Stephen Porter.

12 So there's a gate that you game through from the port
13 of entry into -- was it the parking lot?

14 A. Right. It leads to the Customs parking lot, where the
15 Customs officers park their private vehicles.

16:07:20

16 Q. Okay. And when you're looking west, what street are you
17 looking down?

18 A. West International.

19 Q. West International.

20 And you said that you saw two people on the fence
21 about how many yards away?

16:07:29

22 A. Probably 2 or 300 yards it must have been.

23 Q. What did you do?

24 A. I immediately started running up the hill towards them.

25 Q. Why?

16:07:42

~~Shandon Wynecoop - Direct Examination~~

1 A. To try to stop them.

2 Q. Were there other units on the scene at that point in time,
3 do you know?

4 A. I think that there was one that was about to pull up as I
5 was getting closer to the top. 16:07:53

6 Q. Okay. Were you running by yourself?

7 A. Swartz and Porter were behind me.

8 Q. You were ahead of them?

9 A. Right.

10 Q. What happened? 16:08:03

11 A. By the time I got up there they were -- or about 20 yards
12 of them they were coming back south without the bundles on
13 their backs, and got onto the boundary fence. And we started
14 yelling orders at them to get down or get off the fence.

15 Q. So you actually saw them on top of the fence, climb down
16 from where you were by the port of entry? 16:08:25

17 A. Right.

18 Q. Run across the street. And then when you got down there,
19 you saw them run back across the street and climb the fence?

20 A. Correct. 16:08:38

21 Q. How many were there?

22 A. Two.

23 Q. Do you remember how they were dressed?

24 A. I don't remember what they were wearing, aside from the one
25 that had the cargo pants on. 16:08:44

~~Shandon Wynecoop - Direct Examination~~

1 Q. Okay. Cargo pants meaning?

2 A. He had pockets -- cargo pockets on the side of his pants he
3 was wearing.

4 Q. Okay. Were they carrying anything on their backs?

5 A. No.

16:08:55

6 Q. When you first saw them were they carrying anything on
7 their backs?

8 A. Yes.

9 Q. What were they caring?

10 A. Just small bundles of -- what looked like marijuana bundles
11 on their backs.

16:09:00

12 Q. Had you ever seen that before?

13 A. Yes.

14 Q. Is that a pretty common occurrence?

15 A. Yes.

16:09:09

16 Q. On West I?

17 A. Yes.

18 Q. Okay. Have you ever worked the east side of the port of
19 entry?

20 A. Yes.

16:09:15

21 Q. And is it common over there too for drugs to be smuggled
22 across the fence?

23 A. Yes.

24 Q. Yes.

25 Did you happen to notice a Nogales Police Department

16:09:23

~~Shandon Wynecoop - Direct Examination~~

1 cruiser on West International as you ran up the street?

2 A. It would have been, yeah, on the right-hand side closer
3 down to Blind Center.

4 Q. Okay. Do you know -- did you see anybody by the car or
5 next to the car?

16:09:41

6 A. No.

7 Q. Did you know what Agent Porter did who was behind you?

8 A. I don't know if he did or not.

9 Q. Okay. You were first in the front and you weren't paying
10 attention to them?

16:09:52

11 A. Right. I was focused on getting to them and the fence. I
12 kind of drowned everything else out by then.

13 Q. So when you got there to the location, how far up the fence
14 were they?

15 A. About half way, getting close to the top. One was
16 struggling.

16:10:03

17 Q. Had any Border Patrol agents showed up in their vehicles by
18 then?

19 A. I was it was Agent Devowe.

20 Q. And from what direction was he coming?

16:10:13

21 A. He was coming from the west.

22 Q. From the west?

23 A. Right.

24 Q. Where did he park his car, if he did?

25 A. Close to the -- close to the fence on the west side of

16:10:20

~~Shandon Wynecoop - Direct Examination~~

1 where they were going up.

2 Q. What did he do?

3 A. He got out of his truck and he pulled his -- his Taser.

4 Q. He pulled his Taser out?

5 A. Correct.

16:10:36

6 Q. Did he deploy his Taser?

7 A. He had the laser on th em, but he didn't -- he didn't use
8 it.

9 Q. He didn't use it?

10 A. No.

16:10:44

11 Q. Did he pull out his gun?

12 A. Not that I remember.

13 Q. Did you pull out your gun?

14 A. I thought that I did. And if I did, it was down by my leg.
15 I didn't have it -- I didn't have it out or pointed anywhere.

16:10:54

16 Q. Why did you pull it out at that point?

17 A. That's when -- I saw a knife sticking out of the cargo
18 pocket of the kid that was struggling to get up the fence, a
19 blade sticking out of his pocket.

20 Q. So you pulled your gun out as a precaution because you saw
21 a weapon?

16:11:11

22 A. Right.

23 Q. How long did you keep your gun out? Did you eventually
24 holster it?

25 A. I did.

16:11:18

~~Shandon Wynecoop - Direct Examination~~

1 Q. You did?

2 A. I did.

3 Q. Who else showed up?

4 A. Agent -- or Officer Zuniga from Nogales Police Department.

5 Q. Did you know him prior to that?

16:11:25

6 A. I did not.

7 Q. Okay. What kind of officer was he? Was he a special type
8 of officer?

9 A. He's a canine officer.

10 Q. A canine officer?

16:11:32

11 A. Yes.

12 Q. What did he do?

13 A. He pulled his canine from the vehicle right away and went
14 around the vehicle and had his dog underneath the two on the
15 fence.

16:11:45

16 Q. So the two people on the fence, you said one was
17 struggling; is that right?

18 A. Right.

19 Q. How high had they gotten up on the fence?

20 A. He was at the top of the bollard portion of the fence, and
21 that's where he was kind of just hanging on.

16:11:53

22 Q. It's pretty high up; right?

23 A. Probably 20 feet.

24 Q. If he had fallen down, would he likely have seriously hurt
25 himself?

16:12:06

~~Shandon Wynecoop - Direct Examination~~

1 A. Yeah, most likely.

2 Q. What was the other person doing?

3 A. He was at the top trying to help him get up the rest of the
4 way.

5 Q. Okay. At the top of the bollards, is something on top of
6 the bollards themselves? 16:12:13

7 A. Right. There's a steel plate on the south side of the
8 fence that protrudes about a foot, or a foot and a half above
9 the bollard itself.

10 Q. Okay, so once you get to the top of the bollards you can
11 get on top of that -- 16:12:28

12 A. Right. The plate -- I think it must be about three feet
13 tall, the plate itself. So it protrudes a foot and a half down
14 below and a foot and a half above the bollard.

15 Q. Okay. On the south side of the fence? 16:12:41

16 A. Correct, just a flat surface.

17 Q. By the way, do you know the name of the road on the south
18 side in Nogales, Sonora that parallels West International?

19 A. I don't anymore. It's been a while.

20 Q. Could it be Calle Internacional? 16:12:54

21 A. Yeah.

22 Q. Does that sound about right?

23 A. That's right, yeah.

24 Q. In my imperfect Spanish.

25 A. Yes. 16:13:02

~~Shandon Wynecoop - Direct Examination~~

1 Q. Okay. So the person that had this knife, did he ever pull
2 out the knife and threaten you with it?

3 A. He did not.

4 Q. He did not?

5 A. No.

16:13:11

6 Q. And you say that if you pulled out your gun, you did
7 re-holster it at some point in time?

8 A. Correct.

9 Q. Why would you have done that?

10 A. That's when Officer Zuniga got there. As soon as he pulled
11 his dog out, I was back in my holster, and I was behind Zuniga
12 because he had his dog out, I just got out of the way.

16:13:19

13 Q. Is that something that you learn to do as a Border Patrol
14 Agent when a canine officer shows up and gets his dog out of
15 the vehicle?

16:13:36

16 A. Yeah, you get yelled at if you don't.

17 Q. You get yelled at if you don't.

18 A. Get out of the way, pretty much.

19 Q. Get out of the way.

20 A. Yeah.

21 Q. You just don't know how the dog is going to react?

22 A. Right.

23 Q. Do you remember, besides Agent Devowe, who you said pulled
24 up from the -- he was coming from the west, any other agents
25 that showed up, Border Patrol agents that you knew of?

16:13:52

~~Shandon Wynecoop - Direct Examination~~

1 A. I don't know who was there at the time. I mean, I know who
2 was there now. But I don't remember all -- everybody who was
3 there at the time. I think Corey Brown had pulled up behind
4 him. And Agent Plooy had showed up behind him also.

5 Q. They came in vehicles?

16:14:09

6 A. I believe they came in vehicles. They were parked behind
7 Devowe's vehicle.

8 Q. And did they come from the same direction as Devowe?

9 A. Correct.

10 Q. So the canine officer has his dog at the fence, Agent
11 Devowe pulled out his Taser but he didn't use it and put it
12 back; correct?

16:14:17

13 A. Right.

14 Q. He didn't have his gun drawn. Did Officer Zuniga have his
15 gun drawn?

16:14:32

16 A. No.

17 Q. You re-holstered your gun; correct?

18 A. Yes.

19 Q. What did you do then?

20 A. I just stood behind Zuniga. Then I went around his
21 vehicle. He was on the -- he'd be on the south side of his
22 vehicle, in between his vehicle and the border fence, and I
23 would have went around walking west and then back east to the
24 south -- to the east side of his vehicle, which is the rear end
25 of his vehicle.

16:14:36

16:14:55

Shandon Wynecoop - Direct Examination

1 Q. What was your objective?

2 A. I was just watching the two -- the two kids on the fence.

3 Q. Have you been in situations like that before as an agent,
4 or even after, where you had people who made it back to the
5 fence, who climbed up the fence -- what do you normally do when
6 that happens if you've already secured the bundles that they
7 had or you didn't secure the bundles? What's the enforcement
8 objective?

16:15:08

9 A. Make sure they go one way or another. Just make sure they
10 get down off the fence and you apprehend them, or they get
11 south and they move along.

16:15:23

12 Q. You don't climb up after them?

13 A. No.

14 Q. No?

15 A. No.

16:15:31

16 Q. Do you remember sitting there watching them on the fence,
17 there's Officer Zuniga with his canine dog. Who else was out
18 there that you remember, what other agents?

19 A. Just Agent Swartz.

20 Q. Where were the other agents that showed up on the scene?

16:15:49

21 A. They were all on the north side of the road back in the
22 brush looking for the bundles.

23 Q. Okay.

24 A. As far as I know.

25 Q. As far as you know.

16:15:58

~~Shandon Wynecoop - Direct Examination~~

1 So it was you, Officer Zuniga and Officer Swartz on
2 the street?

3 A. Correct.

4 Q. Did you hear a radio broadcast from any of the officers on
5 the berm that they found bundles? Were you told that or did
6 you not know that?

16:16:12

7 A. I did not know that.

8 Q. What happened then?

9 A. It was probably seconds later, after Zuniga was under the
10 gentleman for maybe 30 seconds, and rocks started coming over
11 the fence.

16:16:32

12 Q. From what direction?

13 A. From the south side, from Mexico.

14 Q. And where were you standing when those were starting to
15 come down?

16:16:43

16 A. Off the corner -- the rear corner of Zuniga's vehicle.

17 Q. So you were in the rear corner of his canine vehicle?

18 A. Right.

19 Q. Do you know where Agent Swartz was?

20 A. He would have been within feet of me, I think.

16:16:52

21 Q. Okay. And how about Officer Zuniga, where was he?

22 A. He was still in between, but he was coming back around the
23 front of his vehicle. As soon as rocks started coming he
24 walked around his vehicle to the north side of his rig.

25 Q. Okay. So when the rocks started coming, what happened?

16:17:09

~~Shandon Wynecoop - Direct Examination~~

1 A. I backed up to the sidewalk.

2 Q. Did you pull your gun out?

3 A. I did not.

4 Q. You did not pull your gun out?

5 A. No.

16:17:21

6 Q. You backed up?

7 A. Correct.

8 Q. To where?

9 A. To the sidewalk, to a little grassy portion of the

10 sidewalk.

16:17:29

11 Q. What was the reason for that?

12 A. Just try to put distance between myself and the fence.

13 Q. Is that what you're generally trained to do at the station,
14 that when rocks come you try to get out of the way?

15 A. I mean, I think it's a case by case thing, but you're kind
16 of told to do what you feel you should do.

16:17:40

17 Q. Right.

18 A. So --

19 Q. And that was the decision you made?

20 A. Right.

16:17:50

21 MR. CHAPMAN: Objection, leading.

22 THE COURT: It was leading.

23 MR. KLEINDIENST: I'll rephrase the question.

24 BY MR. KLEINDIENST:

25 Q. What was the decision you made?

16:17:58

~~Shandon Wynecoop - Direct Examination~~

1 A. To back up.

2 Q. To back up.

3 And Officer Zuniga, what did you see him do?

4 A. He put his canine back into the vehicle, and I believe he
5 stepped back towards the sidewalk also.

16:18:08

6 Q. To where you were?

7 A. Right.

8 Q. Now, did you get hit by any of the rocks?

9 A. I did.

10 Q. You did?

16:18:16

11 A. Not directly hit. It was after a rock had hit the -- hit
12 the ground and rolled into my boot.

13 Q. So it -- did you see it hit the ground in front of you or
14 did you just feel it hit your boot?

15 A. Well, I felt it hit my boot; correct?

16:18:29

16 Q. Was it painful?

17 A. No.

18 Q. No. What kind of shoes or boots did you wear on duty?

19 A. It's our standard Danner boot with a thick Vibram sole that
20 they issue to us.

16:18:45

21 Q. So it's a pretty thick -- thick work boot?

22 A. Right.

23 Q. How far away was the rock when it hit the ground and rolled
24 towards your foot?

25 A. Maybe a couple feet.

16:18:55

~~Shandon Wynecoop - Direct Examination~~

1 Q. Did you see the canine dog?

2 A. I did.

3 Q. Did you have any sense at all that the canine may have been
4 hit by a rock?

5 A. I had originally thought that he had been hit; correct.

16:19:05

6 Q. You had thought it had been hit?

7 A. Right.

8 Q. Are you sure it had been hit?

9 A. No.

10 Q. Why not?

16:19:12

11 A. I didn't see the rock --

12 Q. What did you see?

13 A. -- hit the dog. I just saw the way the dog reacted.

14 Q. How did the dog reacted?

15 A. Just tucked his tail, kind of sprinted away from where he
16 was standing. Acted like he had gotten hit towards the tail
17 end. I don't know if it was just a reaction of being scared of
18 what was going on, or if he had actually had been hit, I'm not
19 sure.

16:19:20

20 Q. So you never actually saw a rock hit the dog?

16:19:36

21 A. Correct.

22 Q. Did Officer Zuniga look concerned at that point in time,
23 about the dog as compared to the rocks?

24 A. Not that I know. I think he was just scrambling to get his
25 dog put away and get out of the way.

16:19:51

~~Shandon Wynecoop - Direct Examination~~

1 Q. What happened then? What did you do?

2 A. Well, there was a couple of rocks that came, and so I ended
3 up backing up after probably like the first couple that hit.
4 One of the first couple that hit my foot, and then I backed up
5 farther onto the sidewalk kind of into the -- kind of into
6 brush a little bit.

16:20:07

7 Q. And why did you do that?

8 A. Just to put more distance between myself and the fence.

9 Q. What did you see Officer Zuniga do?

10 A. I believe the same.

16:20:18

11 Q. He came over to where you were at?

12 A. Yeah.

13 Q. He had put his canine in the canine vehicle?

14 A. Right.

15 Q. Did you notice what Agent Swartz was doing?

16:20:26

16 A. I didn't really pay attention, but I believe he moved
17 towards the fence.

18 Q. He moved towards the fence?

19 A. I mean, he was in front of us, and he -- we kind of went
20 two different directions.

16:20:38

21 Q. Before you -- I think you testified that you and Officer
22 Zuniga were on -- next to his vehicle on the fence line;
23 correct? And then you moved around towards the back; is that
24 correct?

25 A. Right. When he first pulled his dog out I was in the front

16:20:53

~~Shandon Wynecoop - Direct Examination~~

1 of his vehicle behind him. He pulled his dog out, I got out of
2 the way, and I was behind him.

3 Q. I guess my question is when -- you moved around towards the
4 back of the vehicle; correct?

5 A. Yes. 16:21:05

6 Q. And I think you said Agent Swartz was with you at the back
7 of the vehicle?

8 A. Right.

9 Q. Do you remember noticing what he did when this was all
10 going on? 16:21:13

11 A. Right. He moved towards the fence.

12 Q. He moved towards the fence?

13 A. Right.

14 Q. Did you tell him you had been hit by a rock?

15 A. Not that I recall. 16:21:21

16 Q. You don't remember telling him, hey, I got hit with a rock
17 on my foot?

18 A. I don't remember saying anything.

19 Q. It really wasn't much of a consequence, was it?

20 A. No. 16:21:32

21 Q. Did you feel like you were under -- that that was a serious
22 threat to your life at that point in time?

23 A. I mean, I was -- I was scared.

24 Q. Okay.

25 A. I mean, I was still really a junior agent, and first time I 16:21:42

~~Shandon Wynecoop - Direct Examination~~

1 had ever been involved in anything remotely close to that
2 evening. So it was -- it was pretty scary for me.

3 Q. Fair enough.

4 And that's why you moved back?

5 A. I mean, I guess, yeah.

16:21:57

6 Q. Did you see Agent Swartz walk towards the fence?

7 A. Yeah, when we were at the back of the fence. I mean, we
8 were still off the back side of the vehicle.

9 Q. Okay.

10 A. So we could see that we're spreading two different
11 directions.

16:22:12

12 Q. What did you see him do?

13 A. Well, he already -- he already had his gun out, I already
14 know that. But he had his gun out and just -- he went up to
15 the fence and he was looking through the fence.

16:22:25

16 Q. He had his gun out and he went to the fence?

17 A. Right.

18 Q. Did you notice how long he'd had his gun out prior to
19 walking to the fence?

20 A. I didn't really pay attention to it, too much to him. I
21 didn't realize if he had it out the whole time or what it was.
22 I didn't really know.

16:22:34

23 Q. Okay. What did you see him do?

24 A. That's when rocks started coming over. He was yelling
25 through the fence to the one or several people on the south

16:22:48

~~Shandon Wynecoop - Direct Examination~~

1 side to stop throwing rocks.

2 Q. Was he yelling that in English or in Spanish?

3 A. In English.

4 Q. In English?

5 A. Right.

16:23:00

6 Q. That portion of West I, is it higher or lower than the
7 other side of the street in Mexico, Calle Internacional?

8 A. It's higher.

9 Q. It's higher.

10 So when you were standing over by Officer Zuniga's
11 canine vehicle, could you see people standing on the street in
12 Mexico?

16:23:12

13 A. No.

14 Q. And as far as you know, could they see you from down there?

15 A. I don't believe so.

16:23:23

16 Q. You don't believe so?

17 A. No.

18 Q. It's quite a serious significant drop down in elevation to
19 the Mexican side; right?

20 A. Right.

16:23:31

21 Q. What happened then?

22 A. I heard a series of gunfire. And then I immediately pulled
23 my pistol out and I ran towards the two individuals that were
24 on the fence.

25 Q. What did you think was going on?

16:23:49

~~Shandon Wynecoop - Direct Examination~~

1 A. I wasn't sure. I wasn't sure where the gunfire came from
2 at that point. I was concerned with the two individuals that
3 were still on the fence who were making their way farther down
4 the fence away from us as all this was going on.

5 Q. So while this was going on, they were going, what, east? 16:24:04

6 A. They were trying to move east.

7 Q. What would be the advantage of them moving east along the
8 top of the fence?

9 A. Aside from getting away from us, it's just closer in
10 elevation. 16:24:16

11 Q. To --

12 A. It matches to each side of the fence.

13 Q. Okay. Okay. So you -- when you heard the gunshots, you
14 didn't know where the gunshots were coming from; correct?

15 A. Right. 16:24:26

16 Q. But you saw Lonnie Swartz -- Agent Swartz at the fence?

17 A. Right.

18 Q. And you pulled your gun out, not in response to the rocks,
19 but you were -- you pulled your gun out because you heard
20 gunshots and you were covering the two people on the fence? 16:24:39

21 A. Right.

22 Q. Is that your testimony?

23 A. Yes.

24 Q. Okay. Did you go into the street or did you stay on the
25 side of the -- 16:24:47

~~Shandon Wynecoop - Direct Examination~~

1 A. I went into the street.

2 Q. What happened then?

3 A. It was several -- they were probably 30 or 40 yards I would
4 guess farther down the fence than where we were standing -- or
5 where we were originally standing with them. And I just -- I 16:24:59
6 ran down there, and I was about right under the fence when it
7 was happening. I had my gun out and on them trying to hurry
8 them up one way or the other to get down on one side of the
9 fence.

10 Q. Okay. After the gun -- you heard the gunfire, did you see 16:25:13
11 anymore rocks or hear anymore rocks?

12 A. No.

13 Q. And you obviously walked out in the street with your gun
14 and you didn't see or hear any rocks coming down?

15 A. Not at that point. 16:25:29

16 Q. Do you remember how many gunshots you heard?

17 A. I couldn't count, it was just a string of gunfire.

18 Q. What did you see Agent Swartz do?

19 A. I wasn't watching him.

20 Q. Okay. 16:25:38

21 A. I had my back to him. The entire time I was with the guys
22 on the fence, my back was to everything else that was just
23 happening.

24 Q. What did you do after that? Did you change your objective
25 at some point in time? 16:25:51

~~Shandon Wynecoop - Direct Examination~~

1 A. Once they -- the two individuals got to the top of the
2 fence and they were -- as soon as they crested over, I went
3 back to the north side of the road into the brush again.

4 MR. KLEINDIENST: May I approach the witness,
5 Your Honor?

16:26:09

6 THE COURT: You may.

7 BY MR. KLEINDIENST:

8 Q. Agent Wynecoop, I'm going to show you what's marked as
9 Exhibits 38, 39, 168, 176 and 177.

10 Can you just take a look at those photographs, please,
11 if you could?

16:26:52

12 A. Okay.

13 Q. Do you recognize them?

14 A. Yes.

15 Q. What are they?

16:27:16

16 A. That's the scene.

17 Q. Photographs from the scene?

18 A. Yes.

19 Q. On which day?

20 A. It would have been the day, the October 10th.

16:27:22

21 Q. Is there a street that's in the scene of each photograph?

22 A. West International.

23 Q. Okay. Are there vehicles in the photographs that you've
24 described in your testimony?

25 A. Yes.

16:27:34

~~Shandon Wynecoop - Direct Examination~~

1 Q. And do those photographs fairly and accurately depict how
2 the scene looked that night after the rocks had been thrown and
3 the shots had been fired?

4 A. Yes.

5 MR. KLEINDIENST: I would move those into evidence,
6 Your Honor.

16:27:44

7 MR. CHAPMAN: No objection.

8 THE COURT: They can be admitted.

9 (Exhibit Nos. 38, 39, 168, 176 and 177 admitted into
10 evidence.)

16:27:52

11 BY MR. KLEINDIENST:

12 Q. Do you see a photograph of Officer Zuniga's vehicle?

13 A. Yes.

14 Q. And do you see one with -- was there a taxicab on the
15 street?

16:28:03

16 A. Yes.

17 Q. What number is that?

18 A. 38.

19 THE COURT: Which one, Zuniga's vehicle or the
20 taxicab?

16:28:10

21 MR. KLEINDIENST: The taxicab.

22 THE WITNESS: It's in several of them.

23 BY MR. RIGHT1:

24 Q. Okay. Let's talk about the first one. Just tell us the
25 number --

16:28:18

~~Shandon Wynecoop - Direct Examination~~

1 A. 38.

2 Q. 38?

3 A. 38.

4 MR. KLEINDIENST: If I could publish 38, Your Honor?

5 THE COURT: You may.

16:28:24

6 BY MR. KLEINDIENST:

7 Q. So now we're looking at Exhibit 38.

8 Can you tell the jury -- or orientate them as to what
9 they're looking at?

10 A. It would be the back of Officer Zuniga's vehicle, you can
11 see the border fence behind it. And then the sidewalk, about
12 where I was -- about where I was standing, more or less?

16:28:40

13 Q. And which direction is Zuniga's vehicle facing?

14 A. West.

15 Q. Do you see Agent Devowe's vehicle that you spoke about in
16 your testimony?

16:28:59

17 A. Yes.

18 Q. And can you point to that?

19 You can actually write on that like a magic marker.

20 A. (Indicating.)

21 Q. That's Agent Devowe's?

22 A. Correct.

23 Q. Then and there's a taxicab up there?

24 A. Yes.

25 Q. Can you just point to that?

16:29:14

~~Shandon Wynecoop - Direct Examination~~

1 A. (Indicating.)

2 Q. Now, can you show the jury where you and Officer Swartz
3 were standing -- Agent Swartz were standing at the back of
4 Mr. Zuniga's vehicle?

5 A. Prior to the rocks?

16:29:27

6 Q. Prior to the rocks?

7 A. Yeah, about -- about right there. (Indicating.)

8 Q. And the next exhibit I think is number 39. Does that show
9 essentially the same scene?

10 A. Yes, sir.

16:29:42

11 Q. And 40.

12 A. Yes, sir.

13 Q. Okay. Let's go back to 38.

14 Prior to going to the back of the vehicle of
15 Officer Zuniga, where had you been standing with Officer Zuniga
16 and Agent Swartz?

16:29:57

17 A. About in this area right in front. (Indicating.)

18 Q. Between the two vehicles?

19 A. Not between. I would have been directly in front of
20 Zuniga's vehicle.

16:30:10

21 Q. Okay. And where was Officer Zuniga, where would he have
22 been?

23 A. He would have been on the other corner of his --

24 Q. Can you point that out for us?

25 A. You can't really see it, but back here on the other side of

16:30:21

~~Shandon Wynecoop - Direct Examination~~

1 the vehicle. (Indicating.)

2 There you go.

3 MR. KLEINDIENST: What exhibit number is that?

4 MS. FELDMEIER: Exhibit No. 39.

5 BY MR. KLEINDIENST:

16:30:33

6 Q. So we're now looking at Exhibit No. 39. And the one arrow
7 on the left is where Officer Zuniga was?

8 A. Right.

9 Q. And then the other arrow is where you and Agent Swartz
10 were?

16:30:44

11 A. Yeah. It's changed a little now.

12 Q. So when the rocks started coming, where did you go?

13 A. I moved straight back this direction on the other side of
14 the taxi. (Indicating.) Well, it would have been on the back
15 side of the taxi.

16:30:59

16 Q. You went to the back side of the taxi cab?

17 A. Right.

18 Q. Why did you do that?

19 A. Just to put distance between myself and the fence.

20 Q. Was the taxicab something that you were using for some
21 purpose?

16:31:07

22 A. Well, I mean, it was some form of cover, but I was farther
23 behind it.

24 Q. Okay.

25 A. I didn't know what direction the rocks were coming from

16:31:18

~~Shandon Wynecoop - Direct Examination~~

1 originally, or at all, I suppose. I didn't know if they were
2 coming straight or from any certain direction.

3 Q. Okay. So did you move from the taxicab location?

4 A. I just moved farther back away.

5 Q. Okay. Where were you when the rock hit the ground and
6 rolled against your boot?

7 A. I guess if we can look at 176.

8 Q. You can clear the screen.

9 If you want to take that one down.

10 We're now looking at 176. Do you want to just show us
11 where you went from the cab? 16:31:32

12 A. Yeah, so I moved back down into like this area here.
13 (Indicating.)

14 Q. How many rocks do you remember seeing come over?

15 A. There was maybe four or five, six rocks. 16:32:08

16 Q. Total that you saw?

17 A. That's what I saw; right.

18 Q. In and of the photographs you have in front of you, do see
19 any pictures with the rocks that you think came over the fence?

20 A. Not in these ones. 16:32:23

21 I guess there is one in the road.

22 Q. What number is that?

23 A. 38.

24 MR. KLEINDIENST: Can you go back to 38?

25 BY MR. KLEINDIENST: 16:32:52

~~Shandon Wynecoop - Direct Examination~~

1 Q. Do you want to just point to that one?

2 A. Yeah, it's right here. (Indicating.)

3 Q. Do you see any other rocks in the roadway?

4 A. Not in the road, not in these pictures.

5 Q. Did you pick up any of the rocks after this was all over?

16:33:00

6 A. No, sir.

7 MR. KLEINDIENST: May the witness be allowed to stand
8 down, Your Honor?

9 THE COURT: Sure.

10 BY MR. KLEINDIENST:

11 Q. Do you want to come down and take a position over here.

12 You're going to stand to the side so you won't BE
13 blocking the jury's view.

14 Do you want to just -- for the record you're looking
15 at Exhibit No. 311, which is an aerial of the scene; correct?

16:34:07

16 A. Correct.

17 Q. Do you want to point out to the jury which direction you
18 came from from the port of entry?

19 A. I ran from this direction up the hill.

20 Q. And the port of entry would be off the photograph over
21 about here?

16:34:20

22 A. Right. The parking lot starts at the edge of this.

23 Q. Okay. And where do you remember seeing the police cruiser,
24 the Nogales police cruiser?

25 A. He would have been down in this area somewhere, I believe.

16:34:38

~~Shandon Wynecoop - Direct Examination~~

1 Q. Do you ever know what happened to Agent Porter that night?

2 A. I don't actually.

3 Q. Now, if you can orientate for the jury roughly where the
4 car was that was driven by Officer Zuniga and the taxicab, that
5 location.

16:35:04

6 A. Yeah, it's right here, this area. (Indicating.)

7 Q. Do you know what this building is right here?

8 A. I'm not really sure what it is. I think it's some kind of
9 pump house or something. I'm not really sure what's in there.

10 Q. Okay. And the taxicab would have been parked where, that
11 you stood behind?

16:35:21

12 A. Actually the nose of the taxicab was right at this phone
13 line here, power line, I believe. (Indicating.)

14 Q. Okay. Just so the jury will remember the agent's
15 testimony, do you want to just put a thumb tack where it was
16 that you first moved -- well, where you were in the street when
17 the rocks started coming down.

16:35:39

18 A. When the rocks started I was right there. (Indicating.)

19 Q. Okay. And that's a red thumb tack.

20 Where did you end up finally taking cover at the end?

16:36:00

21 A. Straight back in this area right here. (Indicating.)

22 Q. And then when you went out onto the street to surveil the
23 two people still on the fence, which way did you walk?

24 A. That was down this way. I would have been closer to this
25 area down here. (Indicating.)

16:36:22

~~Shandon Wynecoop - Direct Examination~~

1 Q. Where was Agent Swartz when you last saw him?

2 A. As far as I know he didn't -- he was still in this area.

3 He didn't move. But I had my back to him the rest of it -- the
4 rest of the time.

5 Q. You can take a seat. Thank you very much.

16:36:36

6 You've had a chance to look at video of what happened
7 that night from the video cameras?

8 A. Correct.

9 Q. And you recognized yourself in the video and the other
10 people that were out there on the street?

16:37:27

11 A. Yes, sir.

12 MR. KLEINDIENST: Your Honor, I would move into
13 evidence Exhibit 329, which is a side-by-side video with
14 highlighting.

15 MR. CHAPMAN: No objection.

16:37:45

16 THE COURT: 229 can be admitted.

17 MS. FELDMEIER: 329.

18 THE COURT: 329? All right. 329.

19 (Exhibit No. 329 admitted into evidence.)

20 (Exhibit 329 played.)

16:38:05

21 BY MR. KLEINDIENST:

22 Q. Now, do you see West International Street?

23 A. Yes, sir.

24 Q. And do you see yourself?

25 A. I do.

16:38:12

~~Shandon Wynecoop - Direct Examination~~

1 Q. And do you want to point to it with your cursor, if you
2 can?

3 A. I don't think I have a cursor up here.

4 THE COURT: You can use your finger.

5 THE WITNESS: Right there. (Indicating.)

16:38:24

6 (Discussion held off the record)

7 BY MR. KLEINDIENST:

8 Q. You've been circled in blue; right?

9 A. Circled in blue; correct.

10 Q. So that's you in the blue circle?

16:38:45

11 A. Correct.

12 Q. Do you see the people going across the street in front of
13 you?

14 A. Yes.

15 Q. And that vehicle is being driven by who that pulls up from
16 the other side?

16:38:50

17 A. That would be Devowe.

18 Q. And who's behind you?

19 A. That would be Stephen Porter.

20 Q. And do you recognize who now is in red?

16:39:18

21 A. Agent Swartz.

22 Q. So he was behind you and Agent Porter?

23 A. Correct.

24 Q. Okay. Now a vehicle has pulled up and now there's somebody
25 circled in green, who is that?

16:39:35

~~Shandon Wynecoop - Direct Examination~~

1 A. Officer Zuniga.

2 Q. And that's his vehicle right there?

3 A. Correct.

4 Q. Okay. If you want to just narrate what's happening as you
5 see it, that would be great.

16:39:45

6 A. Officer Zuniga's getting ready to pull his dog out of his
7 vehicle, and so we start backing up.

8 Q. And what's he doing now?

9 A. He's getting closer to the fence.

10 And this is -- you can tell the one person is
11 straddling the fence and trying to help the other one up to the
12 top of the bollard. He's trying to help pull him up.

16:40:06

13 Q. And Officer Zuniga has the dog at the fence and now he's
14 backing off?

15 A. Correct.

16:40:27

16 Q. And where are you and Agent Swartz at this point in time?

17 A. Directly behind him.

18 Q. Okay. Which side of the car?

19 A. It would be on the front of the vehicle on the west -- the
20 west side of the vehicle.

16:40:36

21 Q. Nobody else is out in the street besides you and Zuniga and
22 Swartz?

23 A. Just us three at this point.

24 Q. On the left-hand side of the screen, we have the split
25 camera, we have the people climbing the fence; right?

16:40:58

~~Shandon Wynecoop - Direct Examination~~

1 A. Right.

2 Q. And struggling to get up.

3 A. He struggled for a good couple minutes.

4 Q. At this time no rocks had come over?

5 A. No, sir.

16:41:25

6 Q. Can you tell if Agent Swartz has his gun out?

7 A. It looks like it.

8 Q. Do you know who's pulling up in the car behind you?

9 A. I didn't pay attention. And I don't know who that ended up

10 being, no. It was just another -- another NPD officer.

16:41:56

11 Q. Okay. Now you're shown in blue again. What's going on?

12 A. This is when the rocks started coming over.

13 Q. And what are you doing?

14 A. I'm backing up to the sidewalk.

15 Q. And what's Agent Zuniga doing?

16:42:23

16 A. He's putting his partner away.

17 Q. And what's Agent Swartz doing?

18 A. He's walking along the fence.

19 Q. But you weren't focused on him, you were focused on the two

20 people on top of the fence?

16:42:38

21 A. Right.

22 Q. And what are you doing now?

23 A. Now I'm walking back towards the two that were on the fence

24 still. It's hard to tell, but I'm pretty far down the fence

25 from where we were originally. You can tell I have my back --

16:42:52

~~Shandon Wynecoop - Direct Examination~~

1 Q. To Agent Swartz?

2 A. My back to the west; correct.

3 I believe that his -- we're leading up to this is when
4 Agent Swartz was on the radio with dispatch.

5 Q. What did he say on the radio?

16:43:30

6 A. He was notifying them that one was hit and down on the
7 Mexico side and possibly 10-7.

8 Q. Possibly 10-7?

9 A. Possibly 10-7.

10 Q. What does that mean?

16:43:43

11 A. That he's possibly dead.

12 Q. And you hear this on the radio?

13 A. Correct.

14 Q. And you recognize Agent Swartz's voice?

15 A. Right.

16:43:50

16 Q. Now you move back. Why did you move back to --

17 A. As soon as the two got over, both of them got over the
18 fence, I moved away.

19 Q. Okay. Thank you.

20 Let me finally show you Exhibit 40 and Exhibit 188.

16:44:21

21 MR. KLEINDIENST: May I approach the witness,

22 Your Honor?

23 THE COURT: You may.

24 BY MR. KLEINDIENST:

25 Q. If you could look at 40 and 188 and tell the jury if you

16:44:39

~~Shandon Wynecoop - Direct Examination~~

1 recognize what's depicted in the photograph?

2 A. Yes, sir. It's the rocks that had made their way to the
3 driveway.

4 Q. These are the rocks that you saw coming over?

5 A. Right.

16:44:52

6 Q. What driveway are you talking about?

7 A. It's just a driveway that leads into whatever this water
8 pumping -- whatever the pumping station is.

9 Q. That little building?

10 A. It's a closed-off area; right.

16:45:04

11 Q. Is that what you recall the rocks looking like, the ones
12 that are in that photograph?

13 A. It's hard to tell, it was night. But yeah, more or less,
14 baseball sized.

15 MR. KLEINDIENST: Can I publish issue those, number 40
16 and number 188.

16:45:18

17 THE COURT: They can be admitted and you may publish.

18 (Exhibit Nos. 40 and 188 admitted into evidence.)

19 BY MR. KLEINDIENST:

20 Q. Can you circle the rocks there?

16:45:38

21 And that's the wall to the pumping station; correct?

22 A. Right.

23 MR. KLEINDIENST: And then the other photograph, do
24 you want to put that up? 188.

25 BY MR. KLEINDIENST:

~~Shandon Wynecoop - Direct Examination~~

1 Q. And that's just a little bit east of the first photograph;
2 correct?

3 A. Right. Actually -- yeah, it's still the same rocks.

4 Q. Same rocks.

5 A. Right, different view.

6 Q. Is that in the general area where the rocks were coming
7 down?

8 A. Right.

9 Q. In the area that's depict in photographs --

10 A. Right. I mean, from what I saw. That's where I was at, so 16:46:25
11 that's what I saw.

12 MR. KLEINDIENST: Okay. Thank you very much. I have
13 nothing further.

14 THE COURT: Let me see counsel.

15 (At sidebar on the record.) 16:46:43

16 THE COURT: You're not going to get very far if I even
17 let you start right now. So I was thinking we'll go ahead and
18 take a break and start back tomorrow at 9:30.

19 But I'm also going to go back and tell the jurors
20 about next week. 16:47:01

21 Then I'm also going to tell them we're not having
22 court on the 6th, 13th and 19th.

23 MS. FELDMEIER: That's no court?

24 THE COURT: No court on those three days.

25 Where have you been? I've said that 20 times. 16:47:12

CR-15-1723-TUC-RCC - March 21, 2018

1 (End of discussion at sidebar.)

2 THE COURT: We're going to take our evening recess at
3 this point in time.

4 I want to remind you about the admonition I've given
5 before, no research, no investigation, no Twitter and Tweeting. 16:47:32
6 Reading the news, listen to the news, watching the news, none
7 of it.

8 Leave your notes in your chair. You'll get them back.

9 We're going to start tomorrow morning at 9:30. I only
10 have one thing on my calendar tomorrow before this. Today I 16:47:48
11 had two. So there's a pretty good shot we'll be able to start
12 at 9:30.

13 So be ready to go at 9:30.

14 And be careful getting out of that jury box, those
15 monitors can bite.

16 (Proceedings conclude at 4:48 p.m.)

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24

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CR-15-1723-TUC-RCC - March 21, 2018

C E R T I F I C A T E

I, CANDY L. POTTER, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 13th day of April, 2018.

s/Candy L. Potter
Candy L. Potter, RMR, CRR